

Case No. F7420(V)

REMARKS

Reconsideration of the application, as amended, is respectfully requested.

Claim 1 has been amended to delete the preferred elements. No surrender of subject matter is intended as the change is purely cosmetic. Also claim 1 has been amended to place it in better form for prosecution in the U.S. by replacing "consists of" with comprises. Claim 4 has been amended to clarify that the squalene is present in the overall spread composition, which includes olive oil. This amendment is supported by the specification wherein it is clear that squalene is used as a marker reflecting the mild refining conditions (and presence of polyphenols) in accordance with the present invention. Thus, the amendment merely clarifies claim 4. Claim 4 has also been amended to recite a higher amount of squalene.

The application is directed to a spread composition which comprises olive oil and which has no perceivable olive oil odor. The spread composition contains at least 10 parts per million of olive oil originating polyphenols in claim 1. In claims 2 and 3 higher levels of polyphenols are recited. In claim 4, the spread includes at least 1500 ppm of squalene which reflects the mild conditions to which the olive oil has been subjected and correspondingly the relatively high levels of polyphenols present in the refined olive oil.

Although Applicants do not concede that the rejection is correct, in order to expedite issuance of the patent, Applicants are amenable to filing a terminal disclaimer upon indication of allowable subject matter

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It is believed that the Examiner's rejection based on rejections to the form of the claims made in the paragraph bridging pages 2 and 3 of the Office Action have been rendered moot by the amendment.

Decio, EP 421 504 is cited as disclosing a margarine that is made from unrefined olive oil. Cheng et al., U.S. Patent No. 5,374,751 is cited as teaching deodorizing edible oil, including olive oil. However, the Office points to no teaching of a spread having a mildly refined olive oil with the levels of polyphenols and squalene recited in the present claims. Cheng et al. are concerned primarily with use of substantially less than the theoretically required amount of nitrogen as a stripping medium in deodorizing edible oils and/or fats. Cheng et al. explain that the type of refining involved (i.e., chemical or physical refining) could dictate the operating conditions of deodorization. When the non-condensable inert gas is introduced in a particular way and/or in a particular form, the removal of impurities in the edible oil and/or fat is said to be improved.

The present specification indicates on page 11 that an average olive oil after being deodorized for one hour at the normal temperature of 255°C contains 1400 ppm of squalene and less than 10 ppm of polyphenols. In Table I, use of 234°C still results in a polyphenol content of 62 ppm. Although Cheng et al. mention a broad temperature range, they are concerned not just with olive oil but with other oils as well and the Office points to no teaching by Cheng et al. that conditions imposed should be such that the amounts of polyphenols and squalene removed are minimized. Most of the examples of Cheng et al. concerning olive oil utilize temperatures at 255°C or above. See, for example, Examples 1-3. Example 4 talks about temperatures of about 240° to 260°C and includes in Table IV a deodorization temperature of 250°C. The Office points to no indication that Example 4 would inherently result in the polyphenol and

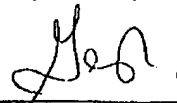
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squalene amounts recited in the present claim. Moreover, even if it did, the Office points to no teaching in Cheng et al. which would lead one of ordinary skill to select such particular olive oils for use in the spread of Decio et al. Therefore, it is not at all clear that Cheng et al. achieved the olive oil recited in the present claims nor, even if they do, that one of ordinary skill would be given any reason by the prior art to select such particular olive oils for use in a spread.

Lal Ganguli et al., EP 849 353 is directed to olive oil with a high polyphenols content and a low bitterness. The olive oil is obtained by exposing olive oil to an emulsified water phase which exhibits enzymatic di-bittering activity and/or by emulsifying with a water phase with a high polyphenols content and evaporating the water phase. Lal Ganguli '353 published less than a year before the U.S. filing date of the present application. Even if Lal Ganguli were considered prior art to the present invention, it is not apparent that it remedies the deficiencies of the Decio/Cheng combination. The Office points to no teaching in Lal Ganguli that its olive oils should be used in the spreads nor that its olive oils will have the elements recited in the present claims.

In view of the foregoing, it is respectfully requested that the application, as amended, be allowed.

Respectfully submitted,



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